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No. 82-1770

IN THE
Supreme Court of the United States
OCTOBER TERM, 1982

NATIONAL ENQUIRER, INC.,
Petitioner,
v.
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES,
Respondent,
SHIRLEY JONES,
Real Party in Interest.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District

REPLY IN SUPPORT OF PETITION FOR CERTIORARI

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1. The Brief in Opposition does not accurately describe the order sought to be reviewed here. The discovery covered by the order is not as to Mr. Ingels' sex life, contrary to the allusions in the Brief in Opposition.[1] Rather,

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[1] If Petitioner were to ask any improper questions in discovery about Mr. Ingels' sex life or anything else, the trial court has ample power on objection to disallow them. Those sorts of ordinary discovery objections are not before this Court. What this case involves, instead, is the trial court's restriction imposed on writing about subjects of inquiry it finds *not* objectionable, subjects within "proper use of the discovery processes." Petition for Certiorari at 9a. Reversal of the overbroad order does not limit the trial court's continuing power to control the proper scope of discovery.

the order prohibits Petitioner from publishing material (unless it can overcome the presumption of violation) relating to the following three subjects:

> "(a) The identity of all Ingels, Inc. employees then [1977-1980] employed;
>
> "(b) The names of all Ingels, Inc. celebrity clients who signed a contract with that entity during the specified period and received monies pursuant thereto;
>
> "(c) The names of all Ingels, Inc. advertiser clients for which client files were opened during the specified period." See Petition for Certiorari at 21a-22a.

That is the discovery that the trial court's order addressed. That, plus a vast undefined area of whatever the trial court might consider "fruits" of those three lists of names, is what its restrictive order applies to.

The assertions in the Brief in Opposition that Mr. Ingels is guarding supposed interests of client privacy is ludicrous in light of the record, which shows without dispute that Ingels, Inc. purchased a large display advertisement in a Hollywood directory as a self-promotion in which it listed, in large typeface and by name, no fewer than 139 of Ingels' own clients.

2. The Brief in Opposition fails to address, explain, cite, or even acknowledge the existence of any of the following decisions of this Court that are relied on in the Petition for Certiorari:

> *Near* v. *Minnesota ex rel. Olson*, 283 U.S. 697 (1931);
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> *Smith* v. *Daily Mail Pub. Co.*, 443 U.S. 97 (1979);
>
> *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829 (1978);
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> *Nebraska Press Ass'n* v. *Stuart*, 427 U.S. 539 (1976);

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Perry v. *Sindermann*, 408 U.S. 593 (1972);

Oklahoma Pub. Co. v. *District Court*, 430 U.S. 308 (1977);

and several others.[2]

3. The Brief in Opposition, at 13, denies that a protective order is "subject to constitutional limitation." That denial is nonsense. Every order of every court in this country for every purpose is subject to the Constitution.

4. The Brief in Opposition cites no authority or precedent whatsoever, not a single case, to justify placing on a newspaper the burden of overcoming a presumption that its publishing is illegal. That burden is particularly inappropriate because the record contains *no evidence whatsoever* that Petitioner *ever* published information obtained in discovery; the order rests entirely on the trial court's totally unsubstantiated concern.

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[2] The Brief in Opposition, at 15, quotes out of context from *Rodgers* v. *United States Steel Corp.*, 536 F.2d 1001 (3d Cir. 1976). That case held *invalid* under the First Amendment a protective order that, like the present one, affected information obtained other than through discovery. The court noted, for example, that "even if we were to agree that the information was privileged, and we entertain serious doubts on this point, that fact alone would not justify a prior restraint on speech here," 536 F.2d at 1008, because of "the rigorous standards by which we judge prior restraints of speech," *id.* at 1007. The same was held in *International Products Corp.* v. *Koons*, 325 F.2d 403, 408 (2d Cir. 1963).

5. Throughout the Brief in Opposition are suggestions —without any support whatsoever in the record—that discovery is sought for the purpose of some extra-judicial publicity campaign to influence prospective jurors. *E.g.*, Br. Op. at 7, 9, 21. There is no such finding; there was no such evidence, not a scintilla; and counsel represent to this Court that there is no basis in fact for that unseemly assertion. Undersigned counsel do not practice law that way. The problem with the order of the trial court is that it restrains the client from writing about a long list of newsworthy public figures (including Ms. Jones and Mr. Ingels, who themselves have appeared on television often and as recently as last week to denounce the National Enquirer) unless it can prove by revealing sources that whatever it says about them was not even indirectly a "fruit" of discovery.

6. We note again that Petitioner here does not contend that there can never be restraints on use of materials produced in discovery. What we do suggest, as many federal and state courts have held, is that such restraints must (1) be based on findings of fact that support their necessity; (2) be limited to discovery material, and not extended to publication on subjects in general; and (3) not impose on a newspaper the burden of trying to overcome a presumption that it has violated a court order. When clear findings of fact support an order, courts are not without appropriate remedies. The remedy here, however, was the wrong one. It was not based upon any fact-findings and was by any reasonable standard overbroad and inappropriate. This Court has "admonished trial courts to employ their usually considerable discretion to search for other alternatives than prior restraints." *KPNX Broadcasting Co.* v. *Arizona Superior Court*, 103 S. Ct. 584, 587 (1982) (Rehnquist, J., in chambers). An admonition is in order once more.

CONCLUSION

For the reasons stated herein and in the Petition for Certiorari, the writ should be granted and the judgment vacated.

Respectfully submitted,

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